

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MARIO HENRY, et al.,)
Plaintiffs,)
vs.) Civil Action No. 10-260 Erie
CITY OF ERIE, et al.,)
Defendants.)

MEMORANDUM ORDER

Plaintiffs Mario Henry, Administrator of the Estate of Gwyneth E. Henry and as Guardian of Style Henry, a minor, and Alyshia M. Richardson, as Administratrix of the Estate of Tyreesha L. Richardson, and as Guardian of Deontay Richardson, a minor, filed a Complaint against Defendants City of Erie, The Housing Authority of the City of Erie ("HACE"), John E. Horan, Joseph Angelotti, Brett C. Hammel and Patricia A. Hammel [ECF #1]. With respect to Defendants City of Erie, Plaintiffs allege that the actions of this defendant violated the equal protection clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983. With respect to defendants The Housing Authority of the City of Erie, John E. Horan, and Joseph Angelotti (collectively "the HACE Defendants"), Plaintiffs allege that the actions of the HACE Defendants violated Ms. Henry's and Ms. Richardson's civil rights under the Fifth and Fourteenth Amendments to the United States Constitution, the United States Housing Act of 1937, 42 U.S.C. § 1437 and its subparts, as well as the regulations promulgated in connection therewith in violation of 42 U.S.C. § 1983 (the Monell claim), and that the HACE Defendants' conduct created a state created danger which violated their rights under 42 U.S.C. § 1983.

The matter was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates. Defendant City of Erie filed a Motion to Dismiss the Complaint pursuant to Fed.R.Civ.P. 12(b)(6) [ECF #10] as did the HACE Defendants [ECF #12]. Plaintiffs filed Responses to both Motions to Dismiss [ECF ##20 and 22] and Defendant City of Erie and the HACE Defendants filed Reply Briefs to Plaintiffs' Responses [ECF ##21 and 23].

The magistrate judge's Report and Recommendation [ECF #25], filed on August 19, 2011, recommended that Defendant City of Erie's Motion to Dismiss be granted and Plaintiffs' equal protection-§1983 claim against Defendant City of Erie be dismissed for failure to state a claim upon which relief can be granted. Report and Recommendation, p. 8. The Report and Recommendation also recommended that the HACE Defendants' Motion to Dismiss be granted in part and denied in part as follows: (1) the motion to dismiss Plaintiffs' § 1983 Monell claim against the HACE Defendants be granted for failure to state a claim upon which relief can be granted; (2) the motion to dismiss Plaintiffs' state created danger claim against the HACE Defendants be denied; and (3) the motion to dismiss Plaintiffs' state created danger claim against Defendants Angelotti and Horan on the basis of qualified immunity, be denied. Id. at pp. 14, 19, and 22.

The HACE Defendants timely filed Objections to the Report and Recommendation [ECF #27]. Plaintiffs filed a Response in Opposition to the HACE Defendants' Objections [ECF #28] and the HACE Defendants filed a Reply Brief [ECF #29].

After de novo review of the pleadings and other documents filed in this case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 27th day of September, 2011 it is hereby ORDERED, ADJUDGED, AND DECREED that Defendant City of Erie's Motion to Dismiss [Doc. #10] is GRANTED and Plaintiffs' equal protection-§1983 claim against Defendant City of Erie is DISMISSED WITH PREJUDICE for failure to state a claim upon which relief can be granted.

It is further hereby ORDERED, ADJUDGED, AND DECREED that Defendants The Housing Authority of the City of Erie, John E. Horan, and Joseph Angelotti's Motion to Dismiss [Doc. #12] is GRANTED to the extent Plaintiffs' Complaint alleges a §1983 Monell claim against them; this claim is DISMISSED WITH PREJUDICE for failure to state a claim upon which relief can be granted.

It is further hereby ORDERED, ADJUDGED, AND DECREED that Defendants The Housing Authority of the City of Erie, John E. Horan, and Joseph Angelotti's Motion to Dismiss [Doc. #12] is DENIED to the extent they contend that Plaintiffs' Complaint fails to state a 42 U.S.C. § 1983 state-created danger claim against them upon which relief can be granted.

It is further hereby ORDERED, ADJUDGED, AND DECREED that Defendants The Housing Authority of the City of Erie, John E. Horan, and Joseph Angelotti's Motion to Dismiss [Doc. #12] is DENIED to the extent that they contend that Defendants Angelotti and Horan are entitled to qualified immunity with respect to the § 1983 state created danger claim brought against them.

It is further hereby ORDERED, ADJUDGED AND DECREED that the Report and Recommendation of Magistrate Judge Baxter [ECF #25], dated August 19, 2011, is adopted as the Opinion of the Court.

Maurice B. Cohill, Jr.
Maurice B. Cohill, Jr.
Senior District Court Judge